

DOCKET NO.: X10-UWY-CV-16-6033559-S : SUPERIOR COURT
PERSONNA NOBLE, ET AL. : COMPLEX LITIGATION DOCKET
V. : AT WATERBURY
NORTHLAND INVESTMENT CORP., ET AL. : AUGUST 10, 2018

**NORTHLAND DEFENDANTS' OBJECTION TO THE APPLICATION OF THE
CHRISTIAN ACTIVITIES COUNSEL FOR PERMISSION TO APPEAR AND FILE A
BRIEF AMICUS CURIAE**

Defendants Northland Investment Corporation, Northland Fund II, L.P., Northland Fund II Partners LLC, Lawrence R. Gottesdiener, and Church Street New Haven LLC (collectively the "Northland Defendants") hereby object to the Christian Activities Council's ("CAC") Application for Permission to Appear and File a Brief Amicus Curiae in Support of the Plaintiffs' Motion for Class Certification. (Docket No. 217.00) ("Application") The Application is untimely, disruptive and prejudicial to Northland Defendants. More than seven months have passed since the Plaintiffs filed their Motion for Class Certification. ("Class Motion") The Defendants filed their opposition papers last month and the parties are now preparing for an evidentiary hearing, which will commence in just a few weeks. CAC chose to delay its request to file a brief in support of the Class Motion until after the Defendants' opposition papers were filed. CAC offers no explanation for its delay and requiring the Northland Defendants to now file a response to an amicus brief on the eve of the hearing on the Class Motion would distract their counsel from preparation for the hearing and be highly prejudicial to the Northland Defendants.¹ Accordingly, CAC's Application should be denied.

¹ Needless to say, Plaintiffs' counsel will not be required to suffer the distraction of responding to a brief that supports the Class Motion.

I. CAC's Application Violates the Practice Book Provision It Invokes: Practice Book § 67-7.

The “[a]pppearance of an amicus curiae is generally authorized by the court’s grant of an application for *the privilege* of appearing as amicus curiae and *not as of right*. Accordingly, the fact, extent and manner of an amicus curiae’s participation is entirely within the court’s discretion” (emphasis in original.) *See Thalheim v. Town of Greenwich*, 775 A.2d 947, 959 (Conn. 2001). However, by rule, applications to file an amicus brief should be granted only when the proposed amicus curiae has sought leave in a timely manner. Practice Book § 67-7, which CAC invokes, provides as follows:

A brief of an amicus curiae in cases before the court on the merits may be filed only with the permission of the court. An application for permission to appear as amicus curiae and to file a brief shall be filed ***within twenty days after the filing of the brief of the party, if any, whom the applicant intends to support....***

(Emphasis added.)²

CAC seeks “permission to appear and file a brief amicus curiae ***in support of the Plaintiffs’ Motion for Class Certification filed on February 14, 2018*** (Docket No. 153.00).” (emphasis added). Yet, CAC failed to file its Application within the required twenty days. Instead, it waited ***almost six months*** to file its Application. Even more egregious, CAC waited until ***after*** the Northland Defendants (and all other Defendants) filed their opposition to the Class Motion, thereby depriving the Northland Defendants of the opportunity to address CAC’s arguments in its opposition papers. That is manifestly unfair and prejudicial to the Northland Defendants.

² Practice Book § 67-7 applies to appellate proceedings; there is no analogue to P.B. 67-7 applicable to proceeding in the Superior Court. However, since that is the Practice Book provision invoked by CAC, the timing requirement of that provision must necessarily be considered by the Court.

The Northland Defendants prepared and, last month, filed a comprehensive response to the evidence and arguments proffered by the Plaintiffs in support of their Class Motion. If the Court grants CAC's request, the Northland Defendants will now be required to prepare a separate comprehensive response to a new set of legal arguments advanced by CAC – arguments that could have been addressed by the Northland Defendants in their opposition papers had they been timely made. Preparing a separate comprehensive response on the eve of the hearing on the Class Motion would be highly distracting and prejudicial to the Northland Defendants in terms of hearing preparation. The potential solution – creating a separate track for briefing CAC's arguments – would impair the timely resolution of the Class Motion.

In short, CAC should not be permitted to invoke a Practice Book rule that it has plainly violated in a very material way. Furthermore, permitting the filing of an amicus brief, at this late date would be highly prejudicial to the Northland Defendants. Accordingly, CAC's Application should be denied as untimely.

II. There Is No Good Cause For CAC's Delay.

CAC is silent as to the cause of its delay and fails to present to this Court any explanation for the untimeliness of its Application. This case has been pending since December 19, 2016 and has received substantial press attention. With the filing of their Class Action Complaint, the Plaintiffs made public their clear intent to seek class certification. Furthermore, the Court has repeatedly put the public on notice of the briefing schedule for the Class Motion; the Court's original scheduling order was filed on February 22, 2017 (Docket No. 108.00) and the amended Scheduling Order setting the current briefing schedule was filed on December 13, 2017 (Docket No. 152.00). Either by choice or neglect, CAC failed to seek leave in a timely manner to participate in these proceedings and should not now be permitted, at this late date, to participate.

Granting CAC's Application would cause undue delay and prejudice to the Northland Defendants.

III. CONCLUSION

For the reasons stated herein, CAC's Application for Permission to Appear and File a Brief Amicus Curiae in Support of the Plaintiffs' Motion for Class Certifications should be denied.

**THE DEFENDANTS,
NORTHLAND INVESTMENT
CORPORATION, LAWRENCE R.
GOTTESDIENER, CHURCH STREET NEW
HAVEN LLC, NORTHLAND FUND II, L.P.,
NORTHLAND FUND II PARTNERS LLC**

By: /s/ Marc J. Kurzman

Marc J. Kurzman
David S. Hardy
Fatima Lahnin
Carmody Torrance Sandak & Hennessey LLP
195 Church Street
New Haven, CT 06509
Tel: 203-777-5501
Fax: 203-784-3199
Firm Juris No. 012592
mkurzman@carmodylaw.com
dhardy@carmodylaw.com
flahnin@carmodylaw.com

Henry A. Sullivan (pro hac vice)
Kevin M. McGinty (pro hac vice)
Mintz Levin Cohn Ferris Glovsky & Popeo PC
One Financial Center
Boston, MA 02111
hsullivan@mintz.com
kmcginty@mintz.com

CERTIFICATION OF SERVICE

This is to certify that a copy of the forgoing was mailed and/or emailed on this 10th day
of August, 2018 to:

David N. Rosen
Barbara Goren
Alexander Taubes
David Rosen & Associates, P.C.
400 Orange Street
New Haven, CT 06511
drosen@davidrosenlaw.com
bgoren@davidrosenlaw.com
ataubes@davidrosenlaw.com
Plaintiffs

Michael O. Sheehan
Sheehan, Reeve & Near LLC
350 Orange Street
Suite 101
New Haven, CT 06511
msheehan@sheehanandreeve.com
Plaintiffs

Jeffrey W. Wisner
Koskoff Koskoff & Bieder PC
350 Fairfield Avenue
Bridgeport CT 06604
jwisner@koskoff.com
Plaintiffs and
Amicus Curiae Christian Activities Council

Robert C. Hinton
Pullman & Comley LLC
90 State House Square
Hartford, CT 06103
rhinton@pullcom.com
Demarco Management Corporation

Michael D. Neubert
Gretchen G. Randall
Neubert Pepe & Monteith PC
195 Church Street, 13th Floor
New Haven, CT 06510
mneubert@npmlaw.com
grandall@npmlaw.com
The Wm. M. Hotchkiss Company

/s/ Marc J. Kurzman
Marc J. Kurzman